

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
CAMDEN VICINAGE

IN RE VALSARTAN, LOSARTAN, AND
IRBESARTAN
PRODUCTS LIABILITY LITIGATION

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MDL No. 2875 (RBK/KW)

MTD ORDER 4

This Document Relates To All Actions.

KUGLER, United States District Judge:

This matter having come before the Court in this Multi-District Litigation ["MDL"] that concerns the sale in the U.S. of prescription generic drugs containing Valsartan ["VCDs"]¹ and which were found to contain cancer-causing contaminants ["VCDs at issue"] on three Motions to Dismiss ["MTDs"] by each of the three categories of defendant—Manufacturers ["Mfrs"], Wholesalers, Pharmacies—and;

These MTDs seeking dismissal of several claims in the Three Master Complaints—Personal Injury [PIMC], the Economic Loss ["ELMC"], and the Medical Monitoring ["MMMC"] pursuant to Fed. R. Civ. P. 12(b)(6); and

The Court intending to issue a series of Opinions and Orders to resolve the MTDs as to specific Master Complaint claims; and

Each opinion being accompanied by an order; and

This ORDER 4 being the fourth in the series and accompanying OPINION 4 of this date to resolve the MTD arguments relating to the fraud-based claims, including negligent misrepresentation, and on the strict liability claims for failure to warn and for design defect,

IT IS HEREBY ORDERED THAT:

As for the Fraud-based Claims:

Against the Manufacturing Defendants:

The Court **DENIES** the Manufacturing Defendants' motion to dismiss the **fraud-based claims** (**fraudulent misrepresentation; fraudulent concealment; fraud by omission; state consumer**

¹ Although this MDL consolidates cases that allege injury from the U.S. sales of contaminated valsartan, irbesartan and losartan, as of yet, there are no master complaints in this MDL that concern losartan and irbesartan. Therefore, defendants' motions here concern ONLY claims that allege injury relating to contaminated valsartan.

protection statute claims that sound in fraud) as well as the negligent misrepresentation claims, in the ELMC, the PIMC, and the MMMC..

Against the Wholesaler Defendants and the Pharmacy Defendants:

The Court **GRANTS** the Pharmacy Defendants' and the Wholesaler Defendants' motions to dismiss the **fraud-based claims (fraudulent misrepresentation; fraudulent concealment; fraud by omission; state consumer protection statute claims that sound in fraud)** in the **ELMC, the PIMC, and the MMMC** and dismisses these claims **WITHOUT PREJUDICE**.

Plaintiffs may file a motion for LEAVE TO AMEND these Master Complaints as to the fraud-based claims against the Pharmacy Defendants and the Wholesaler Defendants, according to the deadline set forth in the accompanying Order; and

IT IS FURTHER ORDERED THAT:

As for the Negligent Misrepresentation Claims:

Against the Wholesaler Defendants and the Pharmacy Defendants:

The Court **GRANTS** the Pharmacy Defendants' and the Wholesaler Defendants' motions to dismiss the negligent misrepresentation claims in the **in the ELMC, the PIMC, and the MMMC** and dismisses these claims **WITHOUT PREJUDICE**; and .

IT IS FURTHER ORDERED THAT:

As for Strict Liability-Design Defect Claims Relating to Manufacturing Defect:

Against the Manufacturing Defendants in the PIMC

The Court **GRANTS** the Manufacturing Defendants' motion to dismiss the **strict liability-manufacturing defect claim in the PIMC that arise under the laws of Delaware, Massachusetts, North Carolina, Virginia, Indiana, and Pennsylvania** and dismisses these claims **WITH PREJUDICE**; and

IT IS FURTHER ORDERED THAT:

As for Strict Liability-Design Defect Claims NOT Relating to Manufacturing Defect:

The Court **DENIES** the Manufacturing Defendants' motion to dismiss the **strict liability-design defect claims in the PIMC that arise under the laws of states that do NOT prohibit strict liability- design defect claims**; and

IT IS FURTHER ORDERED THAT:

As For Strict Liability- Failure To Warn Claims in the PIMC and MMMC

Against Manufacturing Defendants

The Court **DENIES** the Manufacturing Defendants' motion to dismiss the **strict liability-failure to warn claims in the PIMC and the MMMC** that arise **under the laws of states** that do **NOT** prohibit strict liability failure to warn claims.

The Court **GRANTS** the Manufacturing Defendants' motion to dismiss the **strict liability-failure to warn claims in the PIMC and the MMMC** that arise **under the laws of states that PROHIBIT** strict liability failure to warn claims.

Against Wholesaler and Pharmacy Defendants

The Court **DENIES** the **Wholesaler Defendants' and the Pharmacy Defendants' motions to dismiss the strict liability-failure to warn claims in the PIMC and the MMMC.**

These defendants , at a later, appropriate stage of these proceedings, may raise this issue with the Court by way of a motion for summary judgment; and

IT IS FURTHER ORDERED THAT:

Plaintiffs may file a Motion for LEAVE TO AMEND any of the claims dismissed herein WITHOUT PREJUDICE for up to and including thirty days from the date of this Order 4.

Dated: January 29, 2021

/s Robert B. Kugler
ROBERT B. KUGLER
United States District Judge